

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 1275

Introduced by Senators Leno and Steinberg
(Principal coauthor: Assembly Member Caballero)

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, and 2923.75 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Leno. Mortgages: foreclosures.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.

Existing law, until January 1, 2013, and as applied to mortgages and deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential real property containing no more than 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined, prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid

foreclosure. Existing law requires the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, extend those requirements *for those types of dwellings* to apply to mortgages or deeds of trust recorded prior to January 1, 2009, ~~that are secured by owner-occupied residential real property containing no more than 4 dwelling units if the loans are required to be reviewed under federal Home Affordable Modification Program (HAMP) guidelines, or between January 1, 2003, and January 1, 2009, if the loans are not required to be reviewed under HAMP guidelines.~~ The bill would require a mortgagee, beneficiary, or authorized agent, within a specified time period prior to the filing of a notice of default, to provide the borrower with written information regarding loan modifications and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages. The bill would further revise the borrower contact requirements described above by requiring a mortgagee, beneficiary, or authorized agent to make reasonable borrower solicitation efforts, as specified, to explore options for the borrower to avoid foreclosure. The bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default ~~until these solicitation efforts have failed or the borrower has been evaluated and determined to be ineligible for a loan modification or the borrower has failed to submit an application prior to the passing of the deadline.~~ The bill would ~~establish time periods in which the mortgagee, beneficiary, or authorized agent is required to review and respond to a borrower's request for a loan modification, subject to certain exceptions~~ *specify minimum time periods in which the borrower may submit an application or supplemental information for a loan modification, and would require the mortgagee, beneficiary, or authorized agent, if it denies the application, to send a denial explanation letter within a specified time period. These requirements would not apply to a mortgagee, beneficiary, or authorized agent that has no loan modification option available to the borrower.*

This bill would require, until January 1, 2013, that a mortgagee, beneficiary, or authorized agent, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts, ~~and mail the borrower a notice stating that the borrower solicitation requirements have been met relating to its borrower solicitation and~~

foreclosure avoidance efforts. The bill would provide that failure to record a declaration of compliance, or failure to materially comply with these provisions, would constitute grounds for the borrower to bring an action to void the foreclosure, or to recover specified damages from the mortgagee, trustee, beneficiary, or authorized agent, if specified conditions exist.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.4 is added to the Civil Code, to read:
2 2923.4. (a) A state government entity shall create the following
3 notice in at least 12-point type and make it available in English
4 and the languages set forth in subdivision (b) of Section 1632:

5
6 “Important Notice Regarding Your Rights and Foreclosure
7 Avoidance Options: California law requires that you receive this
8 notice of your legal rights before the foreclosure process begins.

9 ARE YOU HAVING TROUBLE PAYING YOUR MORTGAGE?
10 If you are having trouble paying your mortgage, you should
11 contact your loan servicer as soon as possible to discuss options
12 for avoiding foreclosure. Your loan servicer is the company listed
13 on your mortgage bills that collects your mortgage payments.

14 You may also call 1-800-569-4287 to find a housing counseling
15 agency certified by the United States Department of Housing and
16 Urban Development (HUD) that offers free services in your area.

17 POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

18 One potential option for avoiding foreclosure is a loan
19 modification. Your loan servicer may be participating in the federal
20 loan modification program called the Home Affordable
21 Modification Program (HAMP), which has specific requirements
22 and guidelines. To see if your loan servicer is participating, or to
23 find out more about this program, visit
24 http://www.makinghomeaffordable.gov/contact_servicer.html.

25 Your loan servicer may, but is not required to, offer other types
26 of loan modifications instead of or in addition to HAMP. However,
27 not all loan servicers offer loan modifications, and not all
28 borrowers are eligible to apply for a loan modification. You may
29 also qualify for other options for avoiding foreclosure, such as

1 *loan refinancing, a temporary forbearance, a repayment plan,*
2 *short sale, or a deed in lieu of foreclosure.*

3 *With this notice, you should have received a letter from your*
4 *loan servicer that describes any options for avoiding foreclosure*
5 *that may be available to you. That letter should describe any types*
6 *of loan modifications that you may be eligible to apply for, and*
7 *list the steps you must take to apply.*

8 *If the letter from your loan servicer indicates that you may be*
9 *eligible to apply for a loan modification and you are interested in*
10 *applying, you must submit the required documentation to your*
11 *loan servicer as soon as possible. Your loan servicer must give*
12 *you at least 45 days from the date you received this notice to submit*
13 *the required documentation. Be sure to read and carefully review*
14 *any communication from your loan servicer, and submit all of the*
15 *documentation and information required by the deadlines indicated*
16 *in the loan servicer's communications. If you submit all of the*
17 *required documentation and information by the specified deadlines,*
18 *your loan servicer must review your application and inform you*
19 *of its decision before initiating the foreclosure process.*

20 *If your loan servicer denies your request for a loan modification,*
21 *it must send you a detailed letter that explains the reason for the*
22 *denial and provides you with contact information for the loan*
23 *servicer if you need more information or want to dispute the denial.*

24 **THE FORECLOSURE PROCESS**

25 *If your loan servicer complies with the contact and notice*
26 *requirements described in Sections 2923.5 and 2923.73 of the Civil*
27 *Code, including sending you a denial explanation letter if you are*
28 *eligible to apply for a loan modification and submit a timely loan*
29 *modification application, it may proceed with the foreclosure*
30 *process. Your loan servicer may not foreclose on your home*
31 *without filing official documents with the county recorder. You*
32 *are entitled to receive copies of those documents.*

33 **Notice of Default:**

34 *The first step in the foreclosure process is the filing of a notice*
35 *of default. If your loan servicer records a notice of default on your*
36 *loan, it must mail you a copy of that notice by certified mail and*
37 *must wait at least three months before taking further steps to sell*
38 *your home.*

39 **Notice of Sale:**

1 *Three months after filing the notice of default, your loan servicer*
 2 *may file a notice of sale that sets out the date, time, and place of*
 3 *the scheduled foreclosure sale. Your loan servicer must post the*
 4 *notice of sale on your property, mail you a copy of the notice by*
 5 *certified mail, and wait at least 20 days before selling your home.*
 6 *Your notice of sale will include the contact information of the*
 7 *person or company to call if you want more information about*
 8 *your sale date. You should make note of that contact information*
 9 *and be sure to check for any changes to the sale date.*

10 *Please seek legal help if you believe that you have been denied*
 11 *your legal foreclosure rights. Keep in mind, though, that it is illegal*
 12 *for any person, including a lawyer, to charge you for helping you*
 13 *with a loan modification or other effort to avoid foreclosure before*
 14 *providing the services promised.”*

15
 16 *(b) The English and translated forms of this notice shall be*
 17 *made available on or before January 31, 2011.*

18 *(c) This section shall remain in effect only until January 1, 2013,*
 19 *and as of that date is repealed, unless a later enacted statute, that*
 20 *is enacted before January 1, 2013, deletes or extends that date.*

21 *SEC. 2. Section 2923.5 of the Civil Code is amended to read:*
 22 *2923.5. (a) ~~(1)~~—A mortgagee, trustee, beneficiary, or authorized*
 23 *agent may not file a notice of default pursuant to Section 2924*
 24 *until ~~30 days after initial contact is made as required by paragraph~~*
 25 *~~(2) or 30 days after satisfying the due diligence requirements as~~*
 26 *~~described in subdivision (g)~~ the applicable requirements of this*
 27 *section and Sections 2923.7 and 2923.73 have been satisfied.*

28 *(b) For all mortgage loans, a notice of default may not be filed*
 29 *until a borrower either applies for a loan modification and has*
 30 *been evaluated and denied for a loan modification based on the*
 31 *requirements and guidelines of the mortgagee, beneficiary, or*
 32 *authorized agent, or the borrower’s deadline for submitting a loan*
 33 *modification application has passed without the borrower applying*
 34 *for a loan modification. If a mortgagee, beneficiary, or authorized*
 35 *agent has no loan modification option available to a given*
 36 *borrower, a notice of default may be filed 30 days after reasonable*
 37 *borrower solicitation efforts regarding any other foreclosure*
 38 *avoidance options available to that borrower have been completed.*

39 *(c) For purposes of this section, reasonable borrower*
 40 *solicitation efforts shall consist of all of the following:*

1 *(1) After a loan becomes 16 days delinquent, but not later than*
2 *10 days after the loan becomes 60 days delinquent, a mortgagee,*
3 *beneficiary, or authorized agent shall send the borrower a written*
4 *communication, by certified mail with return receipt requested,*
5 *containing both of the following:*

6 *(A) A copy of the informational notice described in Section*
7 *2923.4. A mortgagee, beneficiary, or authorized agent shall be*
8 *subject to the requirements of this subparagraph 30 days following*
9 *the availability of the English and translated forms of the notice,*
10 *but in no event earlier than January 1, 2011.*

11 *(B) A letter that includes the following information, as*
12 *applicable:*

13 *(i) A clear description of the loan modification options available*
14 *to the borrower, if any, and a list of the steps the borrower must*
15 *take to apply for a loan modification, if the mortgagee, beneficiary,*
16 *or authorized agent has an existing loan modification program or*
17 *if the borrower is otherwise eligible to be considered for a loan*
18 *modification by the mortgagee, beneficiary, or authorized agent.*

19 *(ii) A statement that no loan modification option is available to*
20 *the borrower, if the mortgagee, beneficiary, or authorized agent*
21 *does not offer any loan modification programs or if the borrower*
22 *is not eligible to be considered for a loan modification.*

23 *(iii) A toll-free telephone number that will provide access to a*
24 *live representative during business hours for borrowers who wish*
25 *to discuss options for avoiding foreclosure with their mortgagee,*
26 *beneficiary, or authorized agent.*

27 *(iv) The Internet Web site address, if any, of the mortgagee,*
28 *beneficiary, or authorized agent, where a borrower may obtain*
29 *the following:*

30 *(I) Information about any available options for avoiding*
31 *foreclosure.*

32 *(II) A list of financial documents borrowers should collect and*
33 *be prepared to present to the mortgagee, beneficiary, or authorized*
34 *agent when discussing options for avoiding foreclosure.*

35 *(III) Contact information for borrowers who wish to discuss*
36 *options for avoiding foreclosure with their mortgagee, beneficiary,*
37 *or authorized agent.*

38 *(IV) The toll-free telephone number made available by HUD to*
39 *find a HUD-certified housing counseling agency.*

1 (2) (A) A mortgagee, beneficiary, or authorized agent shall
2 contact the borrower in person or by telephone in order to assess
3 the borrower's financial situation and explore options for the
4 borrower to avoid foreclosure. *The mortgagee, beneficiary, or*
5 *authorized agent shall attempt to make this contact, at a minimum,*
6 *by calling the borrower by telephone at the last known telephone*
7 *number of record at least three times at different hours and on*
8 *different days. This in-person or telephone communication shall*
9 *be clearly identified as an attempt to initiate discussion with the*
10 *borrower about foreclosure avoidance options, and may not*
11 *include a demand for immediate payment of any past due amounts*
12 *owed by the borrower.* During the initial contact, the mortgagee,
13 beneficiary, or authorized agent shall advise the borrower that he
14 or she has the right to request a subsequent meeting and, if
15 requested, the mortgagee, beneficiary, or authorized agent shall
16 schedule the meeting to occur within 14 days. The assessment of
17 the borrower's financial situation and discussion of options may
18 occur during the first contact, or at the subsequent meeting
19 scheduled for that purpose. In either case, the borrower shall be
20 provided the toll-free telephone number made available by the
21 ~~United States Department of Housing and Urban Development~~
22 ~~(HUD) HUD~~ to find a HUD-certified housing counseling agency.
23 Any meeting may occur telephonically.

24 ~~(b) A notice of default filed pursuant to Section 2924 shall~~
25 ~~include a declaration that the mortgagee, beneficiary, or authorized~~
26 ~~agent has contacted the borrower, has tried with due diligence to~~
27 ~~contact the borrower as required by this section, or that no contact~~
28 ~~was required pursuant to subdivision (h).~~

29 ~~(c) If a mortgagee, trustee, beneficiary, or authorized agent had~~
30 ~~already filed the notice of default prior to the enactment of this~~
31 ~~section and did not subsequently file a notice of rescission, then~~
32 ~~the mortgagee, trustee, beneficiary, or authorized agent shall, as~~
33 ~~part of the notice of sale filed pursuant to Section 2924f, include~~
34 ~~a declaration that either:~~

35 ~~(1) States that the borrower was contacted to assess the~~
36 ~~borrower's financial situation and to explore options for the~~
37 ~~borrower to avoid foreclosure.~~

38 ~~(2) Lists the efforts made, if any, to contact the borrower in the~~
39 ~~event no contact was made.~~

1 (B) A mortgagee, beneficiary, or authorized agent may attempt
2 to contact a borrower using an automated system to dial
3 borrowers, provided that, if the telephone call is answered, the
4 call is connected to a live representative of the mortgagee, trustee,
5 beneficiary, or authorized agent.

6 (C) A mortgagee, beneficiary, or authorized agent satisfies the
7 telephone contact requirements of this paragraph if it determines,
8 after attempting contact pursuant to this paragraph, that the
9 borrower's telephone numbers on file, if any, have been
10 disconnected.

11 (3) If contact has not been made with the borrower within two
12 weeks after the in-person or telephone contact requirements of
13 paragraph (2) have been satisfied, the mortgagee, beneficiary, or
14 authorized agent shall then send a certified letter, with return
15 receipt requested, that includes, at a minimum, the information
16 set forth in subparagraph (B) of paragraph (1) of subdivision (c).

17 (4) The mortgagee, beneficiary, or authorized agent shall
18 provide a means for the borrower to contact it in a timely manner,
19 including a toll-free telephone number that will provide access to
20 a live representative during business hours.

21 (5) The mortgagee, beneficiary, or authorized agent shall post
22 a prominent link on the homepage of its Internet Web site, if any,
23 to all of the following:

24 (A) Information about any available options for avoiding
25 foreclosure.

26 (B) A list of financial documents borrowers should collect and
27 be prepared to present to the mortgagee, beneficiary, or authorized
28 agent when discussing options for avoiding foreclosure.

29 (C) Contact information for borrowers who wish to discuss
30 options for avoiding foreclosure with their mortgagee, beneficiary,
31 or authorized agent.

32 (D) The toll-free telephone number made available by HUD to
33 find a HUD-certified housing counseling agency.

34 (d) If the mortgagee, beneficiary, or authorized agent is
35 participating in the federal Home Affordable Modification Program
36 (HAMP) or is otherwise required to review the borrower's loan
37 under HAMP guidelines, compliance with the borrower solicitation
38 requirements set forth in the applicable HAMP guidelines shall
39 satisfy the reasonable borrower solicitation efforts requirement
40 set forth in this section as long as the mortgagee, beneficiary, or

1 *authorized agent provides the borrower with the written*
2 *communication required by paragraph (1) of subdivision (c) as*
3 *part of, or in addition to, the outreach efforts conducted pursuant*
4 *to the applicable HAMP guidelines.*

5 *(e) If the loan at issue is not required to be reviewed under*
6 *HAMP guidelines, and the mortgagee, trustee, beneficiary, or*
7 *authorized agent had already filed a notice of default prior to*
8 *January 1, 2011, and did not subsequently file a notice of*
9 *rescission, then the mortgagee, trustee, beneficiary, or authorized*
10 *agent shall include as part of the notice of sale filed pursuant to*
11 *Section 2924f a declaration that the mortgagee, beneficiary, or*
12 *authorized agent sent a denial explanation letter to the borrower*
13 *that includes the information set forth in paragraph (2) of*
14 *subdivision (a) of Section 2923.73 at least 30 calendar days before*
15 *filing the notice of sale, if both of the following conditions are met:*

16 *(1) The mortgagee, beneficiary, or authorized agent has an*
17 *existing loan modification program or a borrower is otherwise*
18 *eligible to be considered for a loan modification by the mortgagee,*
19 *beneficiary, or authorized agent.*

20 *(2) The borrower applied for a loan modification no later than*
21 *30 calendar days after receiving the notice of default.*

22 ~~(d)~~

23 *(f) A mortgagee's, beneficiary's, or authorized agent's loss*
24 *mitigation personnel may participate by telephone during any*
25 *contact required by this section.*

26 ~~(e)~~

27 *(g) For purposes of this section, a "borrower" shall include a*
28 *mortgagor or trustor.*

29 ~~(f)~~

30 *(h) A borrower may designate, with consent given in writing,*
31 *a HUD-certified housing counseling agency, attorney, or other*
32 *advisor to discuss with the mortgagee, beneficiary, or authorized*
33 *agent, on the borrower's behalf, the borrowers financial situation*
34 *and options for the borrower to avoid foreclosure. That contact*
35 *made at the direction of the borrower shall satisfy the contact*
36 *requirements of ~~paragraph (2) of subdivision (a)~~ subdivision (c).*
37 *Any loan modification or ~~workout plan offered at the meeting~~*
38 *other foreclosure avoidance option offered by the mortgagee,*
39 *beneficiary, or authorized agent is subject to approval by the*
40 *borrower.*

~~(g) A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, “due diligence” shall require and mean all of the following:~~

~~(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.~~

~~(2) (A) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.~~

~~(B) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgagee, beneficiary, or authorized agent.~~

~~(C) A mortgagee, beneficiary, or authorized agent satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower’s primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.~~

~~(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested.~~

~~(4) The mortgagee, beneficiary, or authorized agent shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.~~

~~(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:~~

~~(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid~~

1 foreclosure, and instructions to borrowers advising them on steps
2 to take to explore those options.

3 ~~(B) A list of financial documents borrowers should collect and~~
4 ~~be prepared to present to the mortgagee, beneficiary, or authorized~~
5 ~~agent when discussing options for avoiding foreclosure.~~

6 ~~(C) A toll-free telephone number for borrowers who wish to~~
7 ~~discuss options for avoiding foreclosure with their mortgagee,~~
8 ~~beneficiary, or authorized agent.~~

9 ~~(D) The toll-free telephone number made available by HUD to~~
10 ~~find a HUD-certified housing counseling agency.~~

11 ~~(h)~~

12 ~~(i) (1) Subdivisions (a), (e), and (g) and (b) shall not apply if~~
13 ~~any of the following occurs:~~

14 ~~(1)~~

15 (A) The borrower has surrendered the property as evidenced by
16 either a letter confirming the surrender or delivery of the keys to
17 the property to the mortgagee, trustee, beneficiary, or authorized
18 agent.

19 ~~(2)~~

20 (B) The borrower has contracted with an organization, person,
21 or entity whose primary business is advising people who have
22 decided to leave their homes on how to extend the foreclosure
23 process and avoid their contractual obligations to mortgagees or
24 beneficiaries.

25 ~~(3)~~

26 (C) A case has been filed by the borrower under Chapter 7, 11,
27 12, or 13 of Title 11 of the United States Code and the bankruptcy
28 court has not entered an order closing or dismissing the bankruptcy
29 case, or granting relief from a stay of foreclosure. *This shall not*
30 *preclude a mortgagee, trustee, beneficiary, or authorized agent*
31 *from soliciting or considering a borrower who is in bankruptcy*
32 *for a loan modification, whether under the requirements of HAMP,*
33 *or under its own proprietary loan modification program.*

34 (2) *Nothing in this subdivision shall be construed to diminish*
35 *in any way the obligations of a mortgagee, trustee, beneficiary,*
36 *or authorized agent that is participating in HAMP or is otherwise*
37 *required to review a loan under HAMP guidelines.*

38 ~~(i)~~

39 (j) This section shall apply only to mortgages or deeds of trust
40 recorded from January 1, 2003, to December 31, 2007, inclusive,

1 that are secured by owner-occupied residential real property
2 containing no more than four dwelling units. For purposes of this
3 subdivision, “owner-occupied” means that the residence is the
4 principal residence of the borrower as indicated to the lender in
5 loan documents.

6 *(1) With respect to loans required to be reviewed under HAMP*
7 *guidelines, this section shall apply only to mortgages or deeds of*
8 *trust recorded prior to January 1, 2009.*

9 *(2) With respect to loans not required to be reviewed under*
10 *HAMP guidelines, this section shall apply only to mortgages or*
11 *deeds of trust recorded between January 1, 2003, and January 1,*
12 *2009.*

13 *(j)*
14 *(k) This section shall remain in effect only until January 1, 2013,*
15 *and as of that date is repealed, unless a later enacted statute, that*
16 *is enacted before January 1, 2013, deletes or extends that date.*

17 *SEC. 3. Section 2923.7 is added to the Civil Code, to read:*

18 *2923.7. (a) (1) In order to initiate the foreclosure process, a*
19 *mortgage servicer shall do both of the following:*

20 *(A) For purposes of completing the declaration of compliance*
21 *described in paragraph (2), compile in one place a record*
22 *demonstrating that the reasonable borrower solicitation efforts*
23 *required by Section 2923.5 have been met. This record shall*
24 *include the dates and times of, and addresses and telephone*
25 *numbers used for, the contact or attempted contact required by*
26 *Section 2923.5. The record shall be made available to the borrower*
27 *within 10 business days if requested in writing after the notice of*
28 *default has been filed.*

29 *(B) Transmit to the foreclosure trustee a declaration of*
30 *compliance that is signed on behalf of the mortgage servicer. The*
31 *declaration shall be signed either by an individual having personal*
32 *knowledge of the facts stated within, or by an individual with*
33 *authority to bind the mortgage servicer, who certifies that the*
34 *declaration is based upon records that were made in the regular*
35 *course of the servicer’s business at or near the time of the events*
36 *recorded. The declaration of compliance shall be included as part*
37 *of, or attached to, every notice of default filed pursuant to Section*
38 *2924. A notice of default that does not include a declaration of*
39 *compliance shall not be recorded.*

(2) *The declaration of compliance shall be substantially similar to the following form:*

DECLARATION OF COMPLIANCE

☐ *The mortgagee, beneficiary, or authorized agent is participating in the Home Affordable Modification Program (HAMP) or is otherwise required to review this loan under HAMP guidelines.*

☐ *The mortgagee, beneficiary, or authorized agent is not required to review this loan under HAMP guidelines.*

BORROWER CONTACT

☐ *This loan is not subject to Cal. Civil Code Sec. 2923.5, pursuant to (check all that apply):*

☐ *Cal. Civil Code Sec. 2923.5(i).*

☐ *Cal. Civil Code Sec. 2923.5(j).*

☐ *This loan is subject to Cal. Civil Code Sec. 2923.5, and the mortgagee, beneficiary, or authorized agent has complied with the requirements of Cal. Civil Code Sec. 2923.5 by doing the following (check all that apply):*

☐ *Satisfying the applicable reasonable borrower solicitation efforts described in Cal. Civil Code Sec. 2923.5(c). If checked, insert the date that the reasonable borrower solicitation efforts were completed here: _____*

☐ *Sending the letter required by Cal. Civil Code Sec. 2923.5(c)(3).*

☐ *Sending the notice and written communication required by Cal. Civil Code Sec. 2923.5(c)(1) during the time period set forth in that section.*

FORECLOSURE AVOIDANCE REVIEW

☐ *This loan is not subject to Cal. Civil Code Sec. 2923.73, pursuant to (check all that apply):*

☐ *Cal. Civil Code Sec. 2923.73(e).*

☐ *Cal. Civil Code Sec. 2923.73(f).*

☐ *Cal. Civil Code Sec. 2923.73(g).*

☐ *This loan is subject to Cal. Civil Code Sec. 2923.73 and (check only one):*

1 *□ The borrower was evaluated for a loan modification but did not qualify, and*
2 *the mortgagee, beneficiary, or authorized agent sent the borrower a denial*
3 *explanation letter in compliance with the requirements of Cal. Civil Code Sec.*
4 *2923.73(a)(2).*

5 *□ The borrower initiated an application for a loan modification either verbally*
6 *or in writing but did not subsequently submit all required written application*
7 *materials and documentation by the applicable deadline, and the mortgagee,*
8 *beneficiary, or authorized agent sent the borrower a denial explanation letter*
9 *in compliance with the requirements of Cal. Civil Code Sec. 2923.73(a)(1).*

10 *□ The borrower did not initiate an application for a loan modification either*
11 *verbally or in writing by the applicable deadline.*

12 *□ The borrower was offered a HAMP trial period plan, but the borrower did*
13 *not accept the trial period plan or failed to comply with the terms of the plan.*

14 *□ The borrower was offered a permanent loan modification, but the borrower*
15 *did not accept the modification offered.*

16 *□ The borrower was offered a permanent loan modification, but the borrower*
17 *failed to comply with the terms of the modification.*

18 *□ The borrower communicated to the mortgagee, beneficiary, or authorized*
19 *agent that he or she is not interested in pursuing a loan modification.*

20
21
22 *(b) This section shall remain in effect only until January 1, 2013,*
23 *and as of that date is repealed, unless a later enacted statute, that*
24 *is enacted before January 1, 2013, deletes or extends that date.*

25 *SEC. 4. Section 2923.73 is added to the Civil Code, to read:*

26 *2923.73. (a) If a borrower initiates an application for a loan*
27 *modification either verbally or in writing, and the mortgagee,*
28 *beneficiary, or authorized agent denies either a permanent loan*
29 *modification or a federal Home Affordable Modification Program*
30 *(HAMP) trial period plan, the mortgagee, beneficiary, or*
31 *authorized agent shall send the borrower a denial explanation*
32 *letter by certified mail no later than 10 business days following*
33 *the denial decision.*

34 *(1) If the loan modification is denied because the borrower*
35 *failed to provide all required verification documents or information*
36 *by the applicable deadline as set forth in subdivision (b), the letter*
37 *shall indicate the date by which the documents or information*
38 *were to be provided, list the documents or information that were*
39 *not provided, and state that the borrower's request for a loan*
40 *modification has been denied for this reason.*

1 (2) *If the borrower submitted all required written application*
2 *materials for a loan modification by the applicable deadline as*
3 *set forth in subdivision (b), and the application is denied, the denial*
4 *explanation letter shall include all of the following in plain English*
5 *or, if communications with the borrower have been primarily in*
6 *one of the languages set forth in subdivision (b) of Section 1632,*
7 *then in that language:*

8 (A) *The date a completed application for a loan modification*
9 *was received from the borrower.*

10 (B) *The date on which a decision was made regarding the*
11 *borrower's application.*

12 (C) *The final decision made by the mortgagee, beneficiary, or*
13 *authorized agent.*

14 (D) *If the mortgagee, beneficiary, or authorized agent was*
15 *required to consider the borrower for a loan modification under*
16 *HAMP, the information required to be provided in the borrower*
17 *notice described in the federal Home Affordable Modification*
18 *Guidelines Supplemental Directive 09-08, issued November 3,*
19 *2009, and any amendments thereto.*

20 (E) *Information detailing the reasons the borrower did not*
21 *qualify for a loan modification, including, but not limited to, the*
22 *following:*

23 (i) *If applicable, an explanation of any investor guidelines or*
24 *restrictions on loan modifications that resulted in the denial*
25 *decision.*

26 (ii) *If the denial decision is based on the borrower's income or*
27 *expenses, or on a debt-to-income ratio or net present value*
28 *calculation, any borrower income or expense figures, including,*
29 *but not limited to, property taxes and hazard insurance premiums,*
30 *used in determining the borrower's qualification for a loan*
31 *modification.*

32 (iii) *If applicable, a finding that the borrower was previously*
33 *offered a loan modification and failed to successfully make*
34 *payments under the terms of the modified loan.*

35 (F) *The name and contact information of the holder of the note*
36 *for the borrower's loan.*

37 (G) *A description of other foreclosure alternatives for which*
38 *the borrower may be eligible, if any, including, but not limited to,*
39 *other loan modification programs, short sale, or deed in lieu or*
40 *forbearance, and a list of the steps the borrower must take in order*

1 to be considered for those options. If the servicer has already
2 approved the borrower for another foreclosure alternative,
3 information necessary to participate in or complete the alternative
4 should be included.

5 (H) Instructions regarding how to contact the mortgagee,
6 beneficiary, or authorized agent for further information about the
7 denial or to dispute the basis for the denial.

8 (b) (1) The mortgagee, beneficiary, or authorized agent shall
9 communicate to the borrower in each contact, whether oral or
10 written, the borrower's deadline for submitting an initial
11 application for a loan modification, which shall not be less than
12 45 days from the borrower's receipt of the notice required by
13 subparagraph (A) of paragraph (1) of subdivision (c) of Section
14 2923.5.

15 (2) If a borrower submits an initial application, but does not
16 include all the documentation or information the mortgagee,
17 beneficiary, or authorized agent needs in order to consider the
18 borrower for a loan modification, the mortgagee, beneficiary, or
19 authorized agent must provide the borrower with written notice
20 that clearly describes any supplemental documentation or
21 information needed to consider the borrower for a loan
22 modification, and the deadline for providing that documentation
23 or information, which shall not be less than 25 calendar days from
24 the date the borrower receives the notice.

25 (3) If the mortgagee, beneficiary, or authorized agent is
26 participating in HAMP or is otherwise required to review the
27 borrower's loan under HAMP guidelines, compliance with
28 applicable HAMP guidelines regarding deadlines and timeframes
29 for the borrower to submit and complete a loan modification
30 application shall satisfy the requirements of this subdivision.

31 (c) If a borrower's request for a loan modification is denied,
32 and the mortgagee, beneficiary, or authorized agent sends a denial
33 explanation letter in compliance with subdivision (a), the
34 mortgagee, trustee, beneficiary, or authorized agent may proceed
35 to record a notice of default and declaration of compliance
36 pursuant to Section 2923.7 even if the borrower initiates a dispute
37 relating to the denial and the dispute has not yet been resolved.

38 (d) This section shall not require a mortgagee, beneficiary, or
39 authorized agent to apply any standards in determining a
40 borrower's eligibility or qualification for a loan modification

1 *separate from the standards and requirements of the loan*
2 *modification program utilized by the mortgagee, beneficiary, or*
3 *authorized agent, and shall not require a mortgagee, beneficiary,*
4 *or authorized agent to offer or provide a borrower with a loan*
5 *modification if that borrower does not qualify for a modification*
6 *under the applicable loan modification program.*

7 *(e) This section shall not apply if the mortgagee, beneficiary,*
8 *or authorized agent has no loan modification program available*
9 *to the borrower, and the mortgagee, beneficiary, or authorized*
10 *agent informed the borrower of that fact in the written*
11 *communication required to be sent to the borrower pursuant to*
12 *subparagraph (B) of paragraph (1) of subdivision (c) of Section*
13 *2923.5.*

14 *(f) (1) This section shall not apply if any of the following occurs:*

15 *(A) The borrower has surrendered the property as evidenced*
16 *by either a letter confirming the surrender or delivery of the keys*
17 *to the property to the mortgagee, trustee, beneficiary, or authorized*
18 *agent.*

19 *(B) The borrower has contracted with an organization, person,*
20 *or entity whose primary business is advising people who have*
21 *decided to leave their homes about how to extend the foreclosure*
22 *process and avoid their contractual obligations to mortgagees or*
23 *beneficiaries.*

24 *(C) A case has been filed by the borrower under Chapter 7, 11,*
25 *12, or 13 of Title 11 of the United States Code, and the bankruptcy*
26 *court has not entered an order closing or dismissing the bankruptcy*
27 *case or granting relief from a stay of foreclosure. This shall not*
28 *preclude a mortgagee, trustee, beneficiary, or authorized agent*
29 *from soliciting or considering a borrower who is in bankruptcy*
30 *for a loan modification, whether under the requirements of HAMP,*
31 *or under its own proprietary loan modification program.*

32 *(2) Nothing in this subdivision shall be construed to diminish*
33 *in any way the obligations of a mortgagee, trustee, beneficiary,*
34 *or authorized agent that is participating in the HAMP or is*
35 *otherwise required to review a loan under HAMP guidelines.*

36 *(g) This section shall apply only to mortgages or deeds of trust*
37 *that are secured by owner-occupied residential real property*
38 *containing no more than four dwelling units. For purposes of this*
39 *subdivision, "owner-occupied" means that the residence is the*

1 *principal residence of the borrower as indicated to the lender in*
2 *loan documents.*

3 *(1) With respect to loans required to be reviewed under HAMP*
4 *guidelines, this section shall apply only to mortgages or deeds of*
5 *trust recorded prior to January 1, 2009.*

6 *(2) With respect to loans not required to be reviewed under*
7 *HAMP guidelines, this section shall apply only to mortgages or*
8 *deeds of trust recorded between January 1, 2003, and January 1,*
9 *2009.*

10 *(h) This section shall remain in effect only until January 1, 2013,*
11 *and as of that date is repealed, unless a later enacted statute, that*
12 *is enacted before January 1, 2013, deletes or extends that date.*

13 *SEC. 5. Section 2923.75 is added to the Civil Code, to read:*

14 *2923.75. (a) All of the options available to borrowers under*
15 *this section are available only subsequent to a trustee sale*
16 *conducted in accordance with Section 2924f.*

17 *(b) (1) If the mortgagee, trustee, beneficiary, or authorized*
18 *agent fails to record a completed declaration of compliance*
19 *pursuant to Section 2923.7, submits a false declaration of*
20 *compliance, or fails to send a denial explanation letter that*
21 *materially complies with the requirements of Section 2923.73, a*
22 *borrower may pursue any one of the following options, as*
23 *applicable, against the mortgagee, trustee, beneficiary, or*
24 *authorized agent:*

25 *(A) If the property at issue is sold to a bona fide purchaser at*
26 *a trustee sale conducted in accordance with Section 2924f, the*
27 *borrower may recover the greater of treble actual damages or*
28 *statutory damages in the amount of ten thousand dollars (\$10,000).*

29 *(B) If, prior to the initiation of an action under this section, the*
30 *property at issue is sold to a bona fide purchaser by the foreclosing*
31 *party subsequent to a trustee sale conducted in accordance with*
32 *Section 2924f in which title was transferred to the foreclosing*
33 *party, the borrower may recover the greater of treble actual*
34 *damages or statutory damages in the amount of ten thousand*
35 *dollars (\$10,000). If the borrower establishes that the mortgagee,*
36 *trustee, beneficiary, or authorized agent had actual notice of the*
37 *borrower's claim under this section prior to selling the property*
38 *to a bona fide purchaser, the borrower shall be entitled to recover*
39 *statutory damages in the amount of fifteen thousand dollars*

1 (\$15,000), in addition to other damages recoverable under this
2 subparagraph.

3 (C) If title to the property at issue is transferred to the
4 foreclosing party at a trustee sale conducted in accordance with
5 Section 2924f, the borrower may bring an action to void the
6 foreclosure sale, except if paragraph (2) applies.

7 (2) For purposes of this subdivision, the declaration of
8 compliance shall not be considered false if it lists an incorrect
9 date for the date that the reasonable borrower solicitation efforts
10 were completed, unless the mortgagee, beneficiary, or authorized
11 agent knowingly included the wrong date on the declaration.

12 (c) If the mortgagee, trustee, beneficiary, or authorized agent
13 fails to send the notice required by subparagraph (A) of paragraph
14 (1) of Section 2923.5 or fails to materially comply with the loan
15 modification review process requirements of Section 2923.73, a
16 borrower may recover statutory damages of up to ten thousand
17 dollars (\$10,000), but not less than one thousand five hundred
18 dollars (\$1,500), from the mortgagee, trustee, beneficiary, or
19 authorized agent.

20 (d) (1) Notwithstanding subdivisions (b) and (c), a borrower
21 shall not have a cause of action under this section for any failure
22 or error that is technical or de minimis in nature.

23 (2) Failure to complete any required section of the declaration
24 of compliance shall not be considered technical or de minimis.

25 (e) This section shall remain in effect only until January 1, 2013,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2013, deletes or extends that date.

28 SEC. 6. Nothing in this act shall affect any cause of action or
29 claim that is pending as of the effective date of this act.

30 SEC. 7. The requirements of Sections 2923.4, 2923.7, and
31 2923.73, the amendments to Section 2923.5 made at the 2009–10
32 Regular Session of the Legislature, and the remedies set forth in
33 Section 2923.75, shall not be construed to be retroactive.

34 SEC. 8. The provisions of this act are severable. If any
35 provision of this act or its application is held invalid, that invalidity
36 shall not affect other provisions or applications that can be given
37 effect without the invalid provision or application.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, April 28, 2010. (JR11)**

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